

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TRAVELERS CASUALTY AND SURETY COMPANY
as Administrator for RELIANCE INSURANCE
COMPANY,

Plaintiff,

- against -

DORMITORY AUTHORITY – STATE OF NEW
YORK, TDX CONSTRUCTION CORP., and KOHN
PEDERSEN FOX ASSOCIATES, P.C.,

Defendants.

AND THIRD AND FOURTH PARTY ACTIONS.

Case No. 07 Civ. 6915 (DLC)

**ANSWER OF DASNY AND
TDX TO CROSS-CLAIM
OF FOURTH-PARTY
DEFENDANT BARTEC
INDUSTRIES, INC.**

Defendants/Third-Party Plaintiffs Dormitory Authority of the State of New York ("DASNY") and TDX Construction Corp. ("TDX"), by their attorneys, Holland & Knight LLP, answer the cross-claim of Fourth-Party Defendant Bartec Industries, Inc. ("Bartec"), dated June 26, 2008 ("Bartec's Cross-Claim"), as follows:

1. The allegations contained in paragraph "Thirty-Ninth" of Bartec's Cross-Claim state a legal conclusion to which no response is required. To the extent a response is required, DASNY and TDX deny each and every allegation contained in paragraph "Thirty-Ninth" of Bartec's Cross-Claim with respect to the alleged liability of DASNY and TDX, and state that they are without knowledge or information sufficient to form a belief as to the truth of the allegations therein regarding the alleged liability of all other parties against whom the Cross-Claim is asserted.

FIRST AFFIRMATIVE DEFENSE

2. Bartec's Cross-Claim fails to state a cause of action against DASNY upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

3. Bartec's Cross-Claim fails to state a cause of action against TDX upon which relief may be granted.

THIRD AFFIRMATIVE DEFENSE

4. Bartec is not entitled to common law indemnity, because the fourth-party complaint alleges that Bartec itself was negligent and/or breached its contract(s) with the fourth-party plaintiffs.

FOURTH AFFIRMATIVE DEFENSE

5. Any damages that have been or may be sustained by Bartec were caused in whole or in part by Bartec's own culpable conduct, as a result of which Bartec's claims are therefore barred or diminished in the proportion that such conduct caused said damages.

FIFTH AFFIRMATIVE DEFENSE

6. Bartec's Cross-Claim is barred as against DASNY and TDX because it was interposed beyond the time required for such pleading under the Federal Rules of Civil Procedure.


SIXTH AFFIRMATIVE DEFENSE

7. Bartec's Cross-Claim may be barred, in whole or in part, by additional defenses that cannot be articulated due to the generality of the Cross-Claim, the fact that discovery is not complete, or other presently undeveloped information. Accordingly, DASNY and TDX reserve their right to amend and/or supplement the foregoing defenses and to raise additional defenses as this action progresses, to the fullest extent permitted by the Federal Rules of Civil Procedure.

WHEREFORE, DASNY and TDX demand judgment dismissing Bartec's Cross-Claim in its entirety as against them, together with the costs and disbursements of this action, attorneys' fees, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
August 1, 2008

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To: All Counsel of Record

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